

## Federal Acquisition Regulation

## 8.605

States, the Administrator of General Services, and the President, or their representatives. The decisions of the board are final and binding on all parties.

[69 FR 16149, Mar. 26, 2004, as amended at 70 FR 18958, Apr. 11, 2005; 71 FR 222, Jan. 3, 2006]

EFFECTIVE DATE NOTE: At 73 FR 53994, Sept. 17, 2008, section 8.602 was amended by revising the introductory text (c) and paragraph (c)(1) were amended, effective October 17, 2008. For the convenience of the user, the revised text is set forth as follows:

### 8.602 Policy.

\* \* \* \* \*

(c) In some cases where FPI and an AbilityOne participating nonprofit agency produce identical items (see 8.603), FPI grants a waiver to permit the Government to purchase a portion of its requirement from the AbilityOne participating nonprofit agency. When this occurs, the portion of the requirement for which FPI has granted a waiver—

(1) Shall be purchased from the AbilityOne participating nonprofit agency using the procedures in Subpart 8.7; and

\* \* \* \* \*

### 8.603 Purchase priorities.

FPI and nonprofit agencies participating in the Javits-Wagner-O'Day (JWOD) Program (see subpart 8.7) may produce identical supplies or services. When this occurs, ordering offices shall purchase supplies and services in the following priorities:

(a) *Supplies.* (1) Federal Prison Industries, Inc. (41 U.S.C. 48).

(2) JWOD participating nonprofit agencies.

(3) Commercial sources.

(b) *Services.* (1) JWOD participating nonprofit agencies.

(2) Federal Prison Industries, Inc., or commercial sources.

EFFECTIVE DATE NOTE: At 73 FR 53994, Sept. 17, 2008, section 8.603 was amended by revising the introductory paragraph; and removing from paragraphs (a)(2) and (b)(1) “JWOD” and adding “AbilityOne” in its place, effective October 17, 2008. For the convenience of the user, the revised text is set forth as follows:

### 8.603 Purchase priorities.

FPI and nonprofit agencies participating in the AbilityOne Program under the Javits-

Wagner-O'Day Act (see Subpart 8.7) may produce identical supplies or services. When this occurs, ordering offices shall purchase supplies and services in the following priorities:

\* \* \* \* \*

### 8.604 Waivers.

FPI may grant a waiver for purchase of supplies in the FPI Schedule from another source. FPI waivers ordinarily are of the following types:

(a) General or blanket waivers issued when classes of supplies are not available from FPI.

(b) Formal waivers issued in response to requests from offices desiring to acquire, from other sources, supplies listed in the FPI Schedule and not covered by a general waiver. Agencies shall process waiver requests in accordance with the procedures at <http://www.unicor.gov>.

### 8.605 Exceptions.

Purchase from FPI is not mandatory and a waiver is not required if—

(a)(1) The contracting officer makes a determination that the FPI item of supply is not comparable to supplies available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery; and

(2) The item is acquired in accordance with 8.602(a)(4);

(b) Public exigency requires immediate delivery or performance;

(c) Suitable used or excess supplies are available;

(d) The supplies are acquired and used outside the United States;

(e) Acquiring listed items totaling \$2,500 or less;

(f) Acquiring items that FPI offers exclusively on a competitive (non-mandatory) basis, as identified in the FPI Schedule; or

(g) Acquiring services.

[69 FR 16149, Mar. 26, 2004, as amended at 70 FR 18958, Apr. 11, 2005; 71 FR 223, Jan. 3, 2006]

EFFECTIVE DATE NOTE: At 73 FR 53994, Sept. 17, 2008, section 8.605 paragraph (e) was amended by removing “\$2,500” and adding “\$3,000” in its place, effective October 17, 2008.